IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

SMT. SUMITRA CHARAN V. THE STATE OF RAJ. & ORS.

S. B. CIVIL WRIT PETITION NO.4040/2006,
under Article 226 of the Constitution of India.

DATE OF ORDER ::: 19.12.2006

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr.Sangeet Lodha, for Petitioner.
Mr.N.M.Lodha, Additional Advocate General, for Respondents.

BY THE COURT: .....

Heard learned counsel for the parties.

In the present writ petition, the petitioner has challenged the order dated 17th September, 2004 (Annexure 2), passed by the Divisional Commissioner, Bikaner, whereby allotment of House No.22 made in favour of the petitioner by order dated 12.3.2004, was cancelled and instead, House No. 131 was allotted. She has also challenged the consequential order dated 23.03.2006, seeking to recover rent from her on penal

rent basis and further, the order dated 04.04.2006 issued by the Additional Commissioner, Bikaner, directing the Executive Engineer, PWD, for recovery of the rent at market rate, and the orders dated 26.04.2006, 30.06.2006 and 09.06.2006 respectively, passed in consequences thereto. This Court, while issuing notice to the respondents, had directed the parties to maintain the status quo with regard to the house in question and the recovery regarding the rent on penalty basis/market basis. The matter was heard today for final arguments.

Learned counsel for the petitioner submitted that the allotment of the house in question was made to her by the respondents on their own. The learned counsel, while inviting attention of the Court towards the application submitted with proforma which has been placed on record as Annexure R/1, submitted that the petitioner did not make any application for allotment of any specific house. The respondent while considering the application for allotment, allotted the said house to the petitioner on their own. Thus, there can be no question of charging any rent on penal/market rate basis from

the petitioner. Learned counsel argued that house No.22, when it was allotted to her, was in bad shape, which the petitioner had to get repaired by sizeable sum of money out of her own pocket and now the house No.131 which is being offered in lieu thereof is also in a dilapidated condition and not fit for human habitation. He argued that the petitioner made a representation to the Minister, General Administration Department, Government of Rajasthan, Jaipur, contending therein that she has spent approximately a sum of Rs.40,000/- and now, she is being required to vacate the house for no fault of her and further that she had become entitled for grant of selection grade in the pay scale of Rs.12,000-420-18,300 w.e.f. 17th October, 2005. Therefore, even if the petitioner was not entitled to allotment of house No.22 originally, now she would be entitled as and when the order of granting her selection grade is passed. The matter is pending consideration with the Government and the order may be passed in time. The aforesaid Minister in his order passed on the application dated 17.2.2006 rejecting the order of cancellation of allotment made and directed that steps should be taken to allot the house to

the petitioner as per Rules and she would not be required to vacate the same. In spite of that, the learned counsel for the petitioner contended, the respondents are still persisting and requiring the petitioner to pay enormously high amount as rent on market rate basis. Reference, in particular, be made to the order dated 30.06.2006, by which the Executive Engineer, PWD has asked the Principal, Dungar College, Bikaner to recover a sum of Rs.7,67,363/- from the petitioner as rent for the period 17.092004 to 17.04.2006 @ Rs.58,539/- per month, describing this as the market rate of rent. This amount, according to the learned counsel, is highly excessive and can by no stretch of logic can be said to be just and reasonable. This order, the learned counsel for the petitioner argued, is actuated by malice and was a result of the mala fide intention on the part of the respondents. It was, therefore, argued that the writ petition be allowed in terms of the prayers aforesaid and the respondents be directed to realise the normal rent from the petitioner and allow her to continue in the same house No.22.

On the other hand, Shri N.M.Lodha, learned Additional

Advocate General, appearing for the respondents, argued that the petitioner was not eligible for allotment of house No.22 as per the Rules. Even though the house was allotted to the petitioner, she also simultaneously withdrew the amount of house rent allowance for five months. This amount in the sum of Rs.8,840/- has to be recovered from her w.e.f. 15.04.2004. It was denied that the petitioner has spent any amount in the renovation of house No.22. Even otherwise also, she did not seek any permission, nor was she allowed to get the house repaired. When the petitioner was not eligible for allotment of house No.22, she cannot insist for continuing in that house. Original allotment made in favour of the petitioner, was wrongly made due to over-sight. It was also denied that the petitioner has been granted selection grade in the scale of Rs.12,000-420-18,300. The house No.22 is in the category of Type I, so the petitioner cannot be allotted the same, because her entitlement is only for the category of Type II quarter. It was denied that the house No.22 was in bad shape. In fact, this house was earlier in occupation of one Shri Madhusudan Sharma, Settlement Officer, Bikaner upto 31st March, 2004 and

immediately after he vacated the same, it was taken possession of by the petitioner. It was denied that house No.131 was not fit for human habitation. If that was so, even then the petitioner could request for allotment of any other suitable accommodation according to her entitlement. In this connection, attention was invited to the order dated 4.2.2005 (Annex. R/4), whereby the petitioner was specifically required to convey if she wanted any alternative accommodation in lieu of house No.131 with the same category. It was submitted that house No.22 was allotted to the petitioner by mistake and the respondents were always within their rights to rectify such a mistake. In fact, the petitioner had filed an appeal against the aforesaid order before the Chief Secretary, who by his order dated 4.2.2005 rejected the same which was conveyed to the petitioner by the Additional Divisional Commissioner, Bikaner vide his letter dated 25.10.2005. It was submitted that the order passed by the Minister of State, General Administration Department, was only limited to the extent that action in the matter should be taken as per Rules. This position was clarified by the Government in its subsequent orders, therefore, the

petitioner cannot insist for continuing in the same house.

The learned Additional Advocate General argued that in view of various representations of the petitioner, the respondents have now taken a final view of the matter. Instead of charging rent at the market rate, they have decided to only charge the same at three times the normal rent, which in their Rules is described as penal rent for the period 17.09.2004 to 31.08.2006. According to him, while the normal rent for this type of quarter is Rs.332/- and for bungalow of this size and location, even the rent at the rate of three times of the normal rate would come less than Rs.1,000/- per month and would by any standards be a normal rent, given the fact that the petitioner is continuing in this bungalow in spite of having been repeatedly required to vacate the same. It was argued that the petitioner cannot insist to continue the same bungalow on the pretext that she is likely to become eligible for Type I category in near future, which she has ben asserting for the last more than one year, whereas, so far no such order granting her selection grade in the concerned scale has been passed. It is, therefore, prayed

that the writ petition filed by the petitioner may be dismissed.

I have considered the arguments of both the learned counsel for the parties and perused the material available on record. The allotments of the Government quarters of various categories are governed by the provisions contained in the Rajasthan Civil Services (Allotment of Residential Accommodation) Rules, 1958. Once when the allotment of a particular type of quarter/bungalow has been made by the respondent, it cannot be said that the respondents at a later point of time would have no right to correct or amend their mistake. Insistence of the petitioner that since she has spent money for renovation of the house notwithstanding the fact that she is not eligible for allotment of this category of quarter, she should be allowed to continue till she eventually acquires the eligibility, cannot be accepted. At the same time, action of the respondents in seeking to recover the rent on market rate as enormously high as Rs.58,539/- per month can neither be accepted nor allowed to stand. In fact, the communication dated 24.8.2006 addressed by the Executive Engineer, PWD, City Division, Bikaner to the Principal, Government Dungar

College, Bikaner is an eye opener, in which the market rate of rent proposed to be recovered from the petitioner has been indicated as Rs.58,539/- per month and total Rs.10, 01,519/- for the period 17.09.2004 to 17.08.2006 has been held to be recoverable from the petitioner. But the respondents have now themselves realized the unreasonableness of the inaction and have come to restrict their claim to three times of the normal rent. This normal rent they are proposing to charge from the petitioner in spite of their repeatedly offering her alternative accommodation, which the petitioner has been refusing to accept. What is therefore, now proposed to be charged is only at three times the normal market rate which cannot be in the facts of the case said to be unreasonable, particularly when the petitioner has been continuing in the occupation of house No.22, although such allotment was cancelled way back on 17.09.2006.

Coming now to the prayer of the petitioner to allow her to continue in the same house, so that in case, she is eventually allowed selection grade, her claim for allotment of category I may become ripe. The respondents also have

denied that the petitioner has been granted selection grade w.e.f. 17.10.2005. Issue thereabout still remains pending at the end of the Government. But this problem with regard to priority may arise, because the allotment in various categories of quarters are always regulated by the Rules and the priority is fixed from the date of the application. According to the instructions of Shri N.M.Lodha, the learned Additional Advocate General, there are already three more applicants for this category of the allotment, but the fact is that when the petitioner becomes eligible for such appointment having gained the pay scale in the category which makes her entitled thereto she would also become eligible to request for such allotment. Such an application in the event of the petitioner acquiring eligibility for allotment of Type I quarter if and when made, will certainly be considered by the respondents in accordance with the Rules. For the present, adverting to the last request of the learned counsel that the petitioner for allowing the petitioner to continue in the house No.22 for some more time, she should be granted reasonable time-period to vacate the house and make alternative arrangements. In the facts of

the present case, it would be only reasonable to grant additional three months' time from today, for which period she would be liable to pay three times normal rent. This rate would also be applicable for the period subsequent to 31.08.2006. It is, therefore, clarified that the petitioner would be liable to pay the three times of the normal rent not only for the period 17.09.2004 to 31.06.2006, but also for the subsequent period, till the expiry of three months allowed by this judgment.

With these directions, the present petition is disposed of with no order as to costs.

(MOHAMMAD RAFIQ), J.

scd.